



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90, WT Docket No. 10-208; FCC 17-11]

Connect America Fund; Universal Service Reform – Mobility Fund

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the parameters for the process in determining whether areas are eligible for funding under the Mobility Fund Phase II. The Commission established the framework for the Mobility Fund Phase II in a Report and Order – adopted concurrently with the Further Notice of Proposed Rulemaking (Further Notice) – but had remaining questions regarding the process in which entities may challenge the areas eligible for support. Therefore, the Commission anticipates that additional comment will allow it to make more informed decisions on the challenge process, thereby making a more robust, targeted challenge process that efficiently resolves disputes about areas eligible for MF-II support.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: All filings in response to the Further Notice must refer to WC Docket No. 10-90 and WT Docket No. 10-208. The Commission strongly encourages parties to develop responses to the Further Notice that adhere to the organization and structure of the Further Notice. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS):

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-

class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auction and Spectrum Access Division, Mark Montano, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (Further Notice) in **WC Docket No. 10-90, WT Docket No. 10-208**, FCC 17-11, adopted on February 23, 2017, and released on March 7, 2017. The proceeding related to this Further Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all

data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule section 1.1206(b). In proceedings governed by rule section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Initial Paperwork Reduction Act of 1995 Analysis

The Further Notice contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Introduction

1. In the Further Notice, the Commission seeks further comment on the parameters for the process in determining whether areas are eligible for funding under the Mobility Fund Phase II (MF-II). In the months leading up to adoption of the MF-II Order, the Commission received a number of specific record filings, including detailed, technical proposals, regarding the process for challenging whether areas will be eligible for MF-II funding. In order to make more informed decisions on the challenge process, the Commission sought further comment on the parameters for the challenge process for MF-II.

2. The Commission commits to a robust, targeted challenge process that efficiently resolves disputes about areas eligible for MF-II support. The Commission's overarching objective is to quickly transition away from the legacy competitive eligible telecommunications carrier (CETC) support system, where support was never awarded based on the need to support the deployment of mobile broadband, to a system directed to that policy goal. The Commission's commitment to fiscal responsibility requires that it not fund areas that already have 4G LTE from an unsubsidized provider. At the same time, the Commission wants to ensure that areas that may require support for qualified 4G LTE are eligible for, and potentially receive, MF-II support. The challenge process is an integral part of that determination, to build upon and improve provider-filed and -certified Form 477 data, which remain the best available data source.

3. The Commission recognizes that any challenge process will necessarily involve tradeoffs in terms of burdens imposed on interested parties and the Commission, as well as the timeliness and accuracy. As such, the Commission is committed to designing the challenge process so that it is as efficient as possible. It does not want to unduly burden challenging parties by creating so high an evidentiary standard that it deters stakeholders from challenging even the most obviously mis-categorized areas. Conversely, the Commission is cognizant of the burdens imposed on parties whose coverage is challenged merely on the basis of anecdotal, unsystematic claims – the burdens of having to spend resources to defend coverage areas in Form 477 filings that they have already certified as accurate. The Commission also will take into account that smaller providers will have fewer resources available, and therefore specifically seeks comment on ways in which the burden of the challenge process can be reduced for smaller providers.

4. Additionally, the challenge process must be administratively efficient. As discussed in the MF-II Order, there is a need to move forward rapidly with MF-II to retarget universal service support being provided to mobile carriers; the challenge process must not impede the implementation of MF-II support. There is a demonstrated need for MF-II support in many areas of the country where support is not provided today, and that support must be disbursed to unserved areas without unreasonable delay.

5. The Commission seeks comment on these guiding principles for the challenge process and whether it should take into consideration additional principles as it designs the process. In addition, the Commission seeks comment on the extent to which these principles are furthered by the specific parameters for the challenge process outlined in the Further Notice.

6. In addition, the Commission recognizes that no matter how well engineered, no wireless network has 100 percent reliability. Even in areas of generally good coverage there may be small regions where performance is less than desired, especially due to natural or manufactured obstructions, areas far inside buildings, basements, and so forth. In light of these network characteristics, the Commission asks what standards and guidance will help staff in the Commission's Wireless Telecommunications Bureau evaluate challenges and expedite their resolution?

7. The Commission seeks general comment on a couple of potential structures for the challenge process. While the Further Notice presents them as separate options, the Commission makes clear that it is not proposing to adopt either option wholesale. Rather, the Commission intends to take the most effective parameters from these various options, as well as possible additional alternatives, to assemble a "best in class" structure for the challenge process.

II. Option A

8. Initial Challenge. The challenge would consist of a certification by the challenging party that in a specific area, the party has a good faith belief, based on actual knowledge or past data collection, that there is not 4G LTE with at least 5 Mbps download speed coverage as depicted on Form 477. The specific area challenged may be for a partial census block or full census block(s). In support of such a challenge, the party would need to file a shapefile in a standard format of the challenged area. What, if any, evidence should be required in support of an initial challenge? What standards should be required for the submission of an initial challenge?

9. A challenge of an area could be made by either a carrier that is submitting a challenge within its licensed area or a state or local government that is submitting a challenge within its jurisdiction, potentially through a state public utilities commission (PUC). The Commission seeks comment on

whether additional parties (carriers that are potential entrants, consumers, etc.) should be allowed to submit challenges.

10. The Commission seeks comment regarding whether it should require that the challenged area be at least a minimum size. Would automatically dismissing de minimis challenges (e.g., challenges that address a very small percentage of the square miles in a given census block group or census tract) further administrative efficiency? If so, what should the Commission set as the minimum size for a challenge?

11. Moreover, the Commission seeks comment regarding whether it should permit challenges for areas that the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus) identify as eligible (i.e., areas where the Form 477 data show no qualified 4G LTE coverage from an unsubsidized carrier). The Commission anticipates that there would be far fewer such challenges than for ineligible areas since the challenging party would likely be the same carrier that submitted – and certified – the Form 477 data that allegedly shows too small a coverage area. Should the Commission’s challenge process allow what are in essence Form 477 corrections? Should those challenges be limited to corrections in the Bureaus’ processing of the Form 477 data as filed?

12. Propagation Map Response. A challenged carrier may respond by submitting an engineering (propagation) map that demonstrates expected coverage for the challenged area. The submission must be substantiated by the certification of a qualified engineer, under penalty of perjury. The Commission seeks comment on the specific technical parameters for the propagation model and the shapefile, and how much time challenged carriers would require to respond. Should the Commission adopt a signal strength threshold for the map? Should the measure be -90 dB (Received Signal Strength Indicator or RSSI) or a different amount? One commenter, for example, has proposed that a coverage map for the challenge process use a -85 dB measure. Should any signal strength be set based on RSSI or Reference Signal Received Power (RSRP) measurements? Is there a particular resolution that the Commission should require for the shapefile? Should the Commission specify any other parameters?

13. The Commission seeks comment on the utility of such shapefiles in the challenge

process. It recognizes that such maps do not actually portray the consumer's experience throughout the area at issue, given in part that a consumer's experience depends on variables other than signal strength. Nevertheless, such maps may be a reasonable step to build into the challenge process for the purpose of narrowing the areas requiring further evidence to resolve the challenge.

14. Submission of Evidence of Actual Speeds Being Provided to Consumers. Once the challenged carrier has timely submitted a map that shows the challenged area to be within the contour of coverage, the original challenger may submit actual speed data (potentially with supporting signal strength data) from hardware- or software-based drive tests or app-based tests (e.g., such as those from established companies such as Ookla, Rootmetrics, Nielsen, and Mosaik) that spatially cover the challenged area. This submission must also be substantiated by the certification of a qualified engineer, under penalty of perjury. What parameters should be specified to ensure that the evidence accurately reflects consumer experience in the challenged area? For instance, should the number of test locations be proportionate to the amount of area challenged? How many tests should be done per location? What other parameters should be included in specifying how these tests are done?

15. Once a challenger submits evidence of actual speeds, what evidence of actual speeds should be accepted from the provider whose coverage is being challenged? How much time should be allowed for the submission of actual speed data?

16. Resolution of Challenge. A party seeking to challenge the Bureaus' initial determination of eligibility for MF-II support would have the burden of proving its claims by a preponderance of the evidence (i.e., enough evidence to make it more likely than not that the status the claimant seeks to prove is true). The Commission seeks comment on this evidentiary standard. Should it require challengers to meet a higher standard, such as clear and convincing evidence? Should the submission of evidence of actual speeds be permitted, or required, and how should that affect the resolution of challenges?

III. Option B

17. In a recent filing, a large, mid-sized, and small provider submitted a joint proposal for how the Commission should structure the challenge process. The following parameters are based on that

joint proposal.

18. Challenge. Under the joint proposal, challenging parties would have 60 days following the Commission's release of a list of eligible areas to submit evidence, which would be filed in the public record. Parties would be permitted to challenge areas that they claim are incorrectly identified as ineligible or eligible. Service providers and governmental entities located in or near the relevant areas would be only parties eligible to participate.

19. Also under the joint proposal, the evidence submitted in a challenge must include a map(s) in shapefile format, of the challenged area. In addition, challenging parties must report actual download speed test data using either actual speed tests or transmitter monitoring data. For the actual speed tests, data from app-based tests (many of which are freely available on consumer devices), and both hardware- and software-based drive tests would be permitted, so long as they met certain standards. For example, with app-based tests and software-based drive tests, late-model LTE devices compatible with a particular carrier's LTE network could be used to measure the speed. What requirements should the Commission adopt for speed tests to ensure that they will be representative of coverage in a disputed area, including those pertaining to time and distance between tests? In considering these issues, the Commission will need to balance the accuracy of any challenge, the burdens on affected parties, and the timeliness of resolution. The challenge evidence must be certified under penalty of perjury.

20. Response. Under the joint proposal, challenged parties would have 30 days to file their certified responses. The responses must meet the same requirements as those for challenging parties – i.e., coverage shapefiles and speed test data.

21. The Commission seeks comment on the burden of requiring this level of response from challenged parties. In particular, should the Commission require the same or reduced evidence from those parties that do not have the burden of proof? The Commission acknowledges that requiring equivalent data from both parties is likely to assist the Bureaus in resolving challenges more efficiently. However, are those efficiency gains outweighed by the burden placed on the challenged party?

22. Resolution. Under the joint proposal, the Commission would reach decisions based on

the weight of the evidence and determine whether any changes to its initial list of eligible areas is warranted.

IV. Additional Options

23. The Commission seeks comment as well on any additional options that parties may wish to propose. For example, one proposal would require all Form 477 filers whose filings represent a basis for declaring certain areas not eligible for MF-II support to (1) supplement those filings within 60 days of the release of a preliminary list of areas not eligible for MF-II support and (2) notify other service providers in those areas of their supplemented Form 477 filings and their declaration that they provide voice and LTE service in those areas. Those other service providers would have 30 days to challenge those declarations of service.

24. The Commission reiterates that it is not necessarily going to adopt either of the options discussed in the Further Notice and summarized above. Therefore, the Commission urges commenters to come up with additional proposals, including consensus proposals that accommodate the interests of multiple parties. This is particularly important to the extent the options discussed above do not adequately address issues that are essential to the structuring of an effective and efficient challenge process.

V. Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

26. In the MF-II Order, the Commission adopted the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II, which will allocate up to \$4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support.

27. In the Further Notice, the Commission proposes a robust challenge process to supplement the Commission's coverage maps and to ensure that it is targeting support where it is most needed. Specifically, because record filings have become more specific the past several months, including detailed, technical proposals regarding the challenge process in the past few weeks, the Commission seeks further comment on the parameters for the challenge process for MF-II. The Commission is committed to a robust, targeted challenge process that efficiently resolves disputes about areas eligible for MF-II support. Its overarching objective is to quickly transition away from the legacy CETC support system, where support was never awarded based on the need to support the deployment of mobile broadband, to a system directed to that policy goal. The challenge process is an integral part of that determination, to build upon and improve provider-filed and -certified Form 477 data, which remain the best available data source. The Commission, therefore, seeks general comment on a couple of potential structures for the challenge process. While the Commission has presented them in this Further Notice as separate options, it is not proposing to adopt either option wholesale. Rather, the Commission intends to take the most effective parameters from these various options, as well as possible additional alternatives, to assemble a "best in class" structure for the challenge process.

B. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

28. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

29. Small Entities, Small Organizations, Small Governmental Jurisdictions. The Commission’s proposed actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describe, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

30. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and

wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

31. Internet Service Providers. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year. Of this total, 3,083 firms had employment of 999 or fewer employees, and 34 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, while Internet Service Providers (broadband) are a subcategory of the broader category of Wired Telecommunications Carrier, there is Census Bureau data specific to Internet Service Providers (broadband). For 2012, Census Bureau data shows there were a total of 1,180 firms in the subcategory of Internet Service Providers (broadband) that operated for the entire year. Of this total, 1,178 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the MF-II Order.

C. Description of Projected Reporting, Recordkeeping, and Other Compliance

Requirements for Small Entities

32. In the Further Notice, the Commission seeks further comment on the parameters for the challenge process for MF-II. It seeks general comment on a couple of potential structures for the challenge process: (1) a proposal by one mobile provider (Option A); and (2) a joint proposal by three providers (Option B). The Commission seeks comment as well on any additional options that parties may wish to propose, such as, for instance, a proposal that would require all Form 477 filers whose filings represent a basis for declaring certain areas not eligible for MF-II support to supplement those filings within 60 days of the release of a preliminary list of areas not eligible for MF-II support. The Commission urges commenters to come up with additional proposals, including consensus proposals that accommodate the interests of multiple parties.

33. Under Option A, the challenge would consist of a certification by the challenging party that in a specific area, the party has a good faith belief, based on actual knowledge or past data collection, that there is not 4G LTE with at least 5 Mbps download speed coverage as depicted on Form 477. In support of such a challenge, the party would need to file a shapefile in a standard format of the challenged area. A challenge of an area could be made by either a carrier that is submitting a challenge within its license area or a state or local government that is submitting a challenge within its jurisdiction, potentially through a state PUC. A challenged carrier may respond by submitting an engineering (propagation) map that demonstrates expected coverage for the challenged area. The submission must be substantiated by the certification of a qualified engineer, under penalty of perjury. Once the challenged carrier has timely submitted a map that shows the challenged area to be within the contour of coverage, the original challenger may submit actual speed data (potentially with supporting signal strength data) from hardware- or software-based drive tests or app-based tests (e.g., such as those from established companies such as Ookla, Rootmetrics, Nielsen, and Mosaik) that spatially cover the challenged area. This submission must also be substantiated by the certification of a qualified engineer, under penalty of perjury. A party seeking to challenge the Bureaus' initial determination of eligibility for MF-II support would have the

burden of proving its claims by a preponderance of the evidence.

34. Under Option B, challenging parties would have 60 days following the Commission's release of a list of eligible areas to submit evidence, which would be filed in the public record. Service providers and governmental entities located in or near the relevant areas would be only parties eligible to participate. The evidence submitted in a challenge must include a map(s) in shapefile format, of the challenged area. In addition, challenging parties must report actual download speed test data using either actual speed tests or transmitter monitoring data. For the actual speed tests, data from app-based tests (many of which are freely available on consumer devices), and both hardware- and software-based drive tests would be permitted, so long as they met certain standards. The challenge evidence must be certified under penalty of perjury. Challenged parties would have 30 days to file their certified responses. The responses must meet the same requirements as those for challenging parties – i.e., coverage shapefiles and speed test data. The Commission would reach decisions based on the weight of the evidence and determine whether any changes to its initial list of eligible areas is warranted.

D. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.” The Commission expects to consider all these factors when it has received substantive comment from the public and potentially affected entities.

36. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, the Commission specifically notes that smaller providers will have fewer resources available, and therefore specifically seeks comment on ways in which it can reduce

the burden of the challenge process on smaller providers. The Commission also seeks comment on specific principles of the challenge proposals and ways to make them as efficient as possible for all interested parties, including small entities.

37. Option A. In order to further administrative efficiency, the Further Notice seeks comment on whether the Commission should require that the challenged area be at least a minimum size and whether it should automatically dismiss de minimis challenges (e.g., challenges that address a very small percentage of the square miles in a given census block group or census tract). The Further Notice also seeks comment regarding whether the Commission should permit challenges for areas that the Bureaus identify as eligible (i.e., areas where the Form 477 data show no qualified 4G LTE coverage from an unsubsidized carrier), which could further promote efficiencies for all parties, including small entities. The Commission emphasizes that there would be far fewer such challenges than for ineligible areas since the challenging party would likely be the same carrier that submitted – and certified – the Form 477 data that allegedly shows too small a coverage area. Recognizing the burden that may be placed on parties responding to challenges and rebuttals, including small entities, the Further Notice requests comment on the specific technical parameters that must be provided and how much time challenged carriers, or original challengers, would require to respond.

38. Option B. In addition to seeking comment on the proposals of Option B, the Commission asks what requirements it should adopt for speed tests to ensure that they will be representative of coverage in a disputed area, including those pertaining to time and distance between tests. The Commission notes that it will need to balance the accuracy of any challenge with the burdens on affected parties, including small entities, and the timeliness of resolution. The Commission also seeks comment on whether the burden of proof should be the same or reduced for challenged parties, including small entities, recognizing that efficiency gains could be outweighed by the burden placed on the challenged party.

39. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and the IRFA contained therein,

in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Further Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

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